

## **A.5 Accounting Methods**

The Bureau requested information regarding the methodology that will be employed to separate actual microwave relocation costs from non-reimbursable premium payments. This is a requirement as "... later market entrants should not be required to contribute to premium payments, because they do not receive the corresponding advantage of being first to market."

While on the surface this may appear to be a simple process, the lessons of history have indicated that it can be a complex determination. Vagaries created by the sheer number, scope, use and types of microwave installations; the number of relocation alternatives; and the number of microwave system manufacturers are just a few of the influencing factors.

### **A.5.1 FCC Influencing Factors**

We do know that in its *First Report and Order* in Docket WT No. 95-157, the FCC greatly simplified the task of discriminating actual versus premium reimbursement payments by adopting, among others, the following policies:

- ◆ PCS licensees will not be required to reimburse incumbents for transaction costs that exceed two percent of the hard costs associated with an involuntary

relocation ... nor will they be required to pay for fees that cannot be legitimately tied to the provision of comparable facilities (paragraph 43, page 22);

- ◆ Identifying, for illustrative purposes, the compensable microwave relocation costs (paragraph 20, page A-10); and
- ◆ Adopting a cap of \$250,000 on the actual cost of relocating a link, with an additional \$150,000 if a new or modified tower is required to achieve comparable facilities (paragraph 27, page A-13).

The FCC also made it clear that these caps and limits are applicable to "subsequent licensees", who must reimburse prior PCS Relocators.

#### **A.5.2 ITA Process**

As part of its accounting procedures and registration processes, ITA will require the completion of a "Microwave Relocation Cost Report" that will contain the illustrative components presented by the FCC for a microwave link, space for additional cost expenditures that do not correspond to the illustrative categories, and a section where costs attributed to new or modified tower requirements may be listed. A sample of this proposed form is contained in Exhibit B-2.

As discussed in Section A.2.3.2, we recommend this form follow a standard format and be applied by all clearinghouses, so that it may be universally accepted by the industry. ITA will be pleased to cooperate with all clearinghouses and other interested organizations to implement this requirement.

The registering party need not provide, nor does the form require, extraneous cost information that may be classified as a premium payment. If a registering party attaches cost items that do not comport with the FCC's relocation reimbursement policies, ITA will review the form for cost exceptions and conduct clarifying discussions with the registering party prior to final registration and retention within the ITA relocation database. ITA will also provide both administrative and "software-friendly" capabilities to assist in the completion of these forms by registering Relocators.

We believe that through the use of the Microwave Relocation Cost Report and registrant consultations, coupled with the FCC's policy determinations, ITA will be able to bifurcate effectively actual and premium microwave relocation expenses from an accounting standpoint.

## **A.6 Confidentiality**

Explanations regarding the retention of confidential information, raised by parties

participating in the cost-sharing proceeding, were requested by the Bureau. ITA believes there are two sources of proprietary information that need to be addressed.

#### **A.6.1 PCS Licensee Site Deployment**

For obvious competitive reasons, Prior Relocators do not want actual or planned site-deployment strategies revealed to Later Entrant licensees, nor do Later Entrants want such information released to Prior Relocators. Through the processes described in Section A.5, there is no requirement for a Prior Relocator to divulge this strategic deployment information to a clearinghouse entity, nor is PCS base station information a component of the Microwave Relocation Cost Report. If it is inadvertently supplied, ITA will not store that information within its relocation database, and site documentation will be returned to the registering Prior Relocator. ITA will also be willing to execute Confidentiality Agreements submitted by registering PCS licensees.

It will be necessary for Later Entrants to supply site information for ITA to conduct PTTs. However, there is no need for, and ITA will not record, site information once a PTT has been concluded. ITA will also be willing to execute Confidentiality Agreements with those Later Entrants for whom ITA is performing analytical or administrative services.

Further, for Later Entrants who are utilizing ITA's Distributed PTT service, proprietary site information will be resident within the confines of the Later Entrant's offices. The resulting Reimbursement Obligation Request for Status forms (see Section B.4.1.2) do not contain site information.

#### **A.6.2 Microwave Incumbent Proprietary Information**

A number of user organizations representing the interests of microwave incumbents voiced concern over the retention of confidential information. Specifically, AAR requested that the clearinghouse should be designed, maintained and operated in such a way as to guarantee the protection of confidential information. UTC commented that only the information that is absolutely necessary to the determination of cost-sharing obligations should be disclosed.

Several microwave incumbent licensees also addressed this issue in their cost-sharing comments. Southern Company requested that the confidentiality of business information be preserved. The Southern California Gas Company stated that confidentiality is particularly important for agreements in the voluntary period, which reflect premiums for early relocation, and that only subsequent (Later Entrant) PCS licensees should be given information as to the amount of the reimbursement obligation.

We believe the operating procedures proposed by ITA in the preceding sections sufficiently address the concerns voiced by these associations and microwave incumbents while, at the same time, maintaining the credibility of the cost-sharing relocation requirement. Internal business information, while pertinent during PCS/microwave negotiations, need not be incorporated within the PCS cost-sharing procedures. In its business plan, ITA categorically proposes that it will not retain, for purposes of relocation reimbursement, information relating to premium payments. Finally, the cost-sharing reimbursement policies adopted by the FCC in WT Docket No. 95-157 should further assuage the concerns of those organizations that specifically called this issue to the attention of the FCC and prospective clearinghouses.

Should the FCC adopt more stringent confidentiality retention policies at a later date, ITA will incorporate appropriate procedures to conform with any new requirements.

#### **A.7 Neutrality**

The Bureau requested entities that wish to become a clearinghouse to explain how it would remain impartial, especially if both PCS licensees and microwave incumbents are permitted to participate in cost-sharing.

### **A.7.1 Microwave Incumbent Relocator Reimbursement**

In its *Further Notice of Proposed Rule Making* in WT Docket No. 95-157, the Commission has tentatively concluded that microwave incumbents should be permitted to seek reimbursement from PCS licensees through the cost-sharing plan. ITA's Operational and Technical Approaches are crafted to provide nonpartisan relocation cost-sharing processes that do not distinguish whether the party seeking reimbursement is a PCS Relocator or an "Incumbent Relocator".

Although the designation is relevant for administrative record-keeping purposes, as a clearinghouse, ITA would require the self-relocating microwave incumbent to follow the identical registration procedures delineated in the above sections. ITA would also follow the identical procedures concerned with accounting methods and confidentiality.

A Microwave Relocation Cost Report would need to be filed at the time of registration. The application of the depreciation schedule may be recognized on a number of key dates, and we suspect that this reimbursement obligation date will be the subject of participating industry comment. ITA assures the Commission that its procedures will be amended to adhere to any final Commission decisions that define the depreciation initiation date. ITA will also presume at this juncture that the reimbursement caps and associated consulting fee limits will apply.

### **A.7.2 ITA Process**

While there may be some encumbrances associated with this proposed policy, *e.g.* voluntary or involuntary negotiations may now be proceeding, the determining relocation reimbursement obligation still centers around the deployment of a PCS site that would affect the operational characteristics of the former or relocating microwave incumbent system. If a site is to be deployed that would prove to incur a reimbursement obligation following a PTT analysis, ITA would notify all affected PCS licensees of their reimbursement obligation. If no sites are deployed that would affect the microwave system, the microwave incumbent would receive reimbursement for actual relocation costs when PCS sites are deployed in the future.

### **A.7.3 Industry Participation**

Finally, the Commission has commented that it is essential for the plan to be administered by the industry to the fullest possible extent. We repeat that we do not intend that a governing council be formed to oversee the conduct of ITA's clearinghouse performance. It would be impractical, if not impossible, to form a council that could effectively represent all segments of the industry. We believe the industry will perform that function by freely choosing the clearinghouse with which it wishes to transact business. The final clearinghouse procedures will ultimately be identified through the public comment process, during which all segments of the



affected industries will have participated.

The maintenance of a governing body also adds a level of cost to the clearinghouse process and may serve to inhibit the ability to respond quickly to changing conditions in the marketplace and to customer requirements.

## **A.8 Dispute Resolution**

The Bureau requests that parties who wish to become a clearinghouse describe how they would resolve disputes between parties.

### **A.8.1 FCC Requirements**

In paragraph 80 of its *Report and Order* in WT Docket 95-157, the Commission concluded that "[D]isputes arising out of the cost-sharing plan, such as disputes over the amount of reimbursement required, should be brought to the clearinghouse first for resolution." By that time, ITA would have already distributed the costs associated with the relocation that were contained within the Microwave Relocation Cost Report to the Later Entrant. The FCC also states, "[T]o the extent that disputes cannot be resolved by the clearinghouse, we encourage parties to use expedited ADR (Alternative Dispute Resolution) procedures ..."

### **A.8.2 Preliminary Negotiations**

Prior to the parties reaching a negotiation impasse, ITA will have attempted to facilitate discussions. In fact, a particular approach we will seek to apply is to have the parties agree to have the relocation costs under dispute reviewed by an independent certified public accounting firm to verify and affirm the cost components for mutual acceptance. If these procedures fail to achieve mutual agreement, ITA is familiar with dispute resolution techniques. ITA has also closely followed the Commission's own efforts with negotiated proceedings, a form of ADR. ITA believes the Commission's conclusions may be implemented successfully only if they are properly tailored to the task at hand.

The industry and the FCC recognize that the clearinghouse may only put forth its best effort to reconcile differences through information dissemination and facilitation of informal negotiations. Any party, however, may choose to ignore the clearinghouse process and proceed directly to ADR processes. This means that an arbitration procedure, where a single solution is provided to the parties, will not work in all instances. What is required is a process more akin to mediation which, if successful, will result in the generation of more dispute resolution agreements.

### **A.8.3 Mediation Process**

As part of its dispute resolution strategy, ITA intends to use experienced independent mediators to assist parties to attain acceptable reimbursement obligation solutions. We have already commenced discussions with individuals to function in this mediator capacity.

In sum, ITA will implement the following dispute resolution mechanism:

- ◆ Following ITA's best efforts at a negotiated solution, any party disputing the cost-sharing reimbursement obligation based upon, for example, relocation cost component or trigger dates, shall notify ITA of its objection within 10 business days;
- ◆ Within two business days of receipt of the objection notice, ITA will inform all relevant parties of the objection and require each party to submit proposed solutions, and within four business days, ITA will submit relocation cost "benchmarks" for the parties' review;
- ◆ Within three business days of receiving the benchmark data, parties may submit proposed solutions or alternatives based on the information supplied; and

- ◆ If agreement is still not reached, ITA will interject an experienced mediator into the dispute resolution process and commence a series of mediation sessions.

The mediation process should take place over seven business days, and it will not be extended unless the mediator and all parties agree that substantial progress toward a mutually satisfactory agreement is imminent. ITA believes the entire process should take no more than 15-20 days, once it receives notification of an objection.



## PART B — TECHNICAL APPROACH

### TABLE OF CONTENTS

---

<b>B.0</b>	<b>Introduction</b>	30
<b>B.1</b>	<b>The Clearinghouse's Role</b>	31
<b>B.2</b>	<b>Initiation</b>	31
<b>B.3</b>	<b>Registration</b>	32
B.3.1	Content	32
B.3.1.1	Administrative/Tracking Data	32
B.3.1.2	Technical/Financial Information	33
B.3.1.3	Reimbursement Caps	34
B.3.2	Registration Submittal Methods	35
B.3.3	Record Retention	35
<b>B.4</b>	<b>Later Entrant Prior Commencement Notification</b>	35
B.4.1	PTT Evaluation	36
B.4.1.1	ITA-conducted PTT	37
B.4.1.2	ITA's Distributed PTT	37
<b>B.5</b>	<b>Later Entrant Notification of Reimbursement Obligation</b>	39
B.5.1	Unlicensed PCS Cost-sharing	40
B.5.2	Depreciation	41
B.5.3	ITA Obligation Notification Procedure	42
B.5.4	Installment Payments	43
B.5.5	Payment Verification/Tracking	43
B.5.6	Reimbursement Obligation Dispute Resolution	44
<b>B.6</b>	<b>Summary</b>	44
	Exhibit B-1, Administrative and Tracking Data	46
	Exhibit B-2, Microwave Relocation Cost Report	48
	Exhibit B-3, Later Entrant Reimbursement Status and Registration Request	50
	Exhibit B-4, Proximity Threshold Evaluation Rectangle Report	51
	Exhibit B-5, Proximity Threshold Evaluation Microwave Path Report	53
	Exhibit B-6, Proximity Threshold Evaluation Base Station Report	55
	Exhibit B-7, Microwave Relocation Cost Sharing Schedule	57
	Exhibit B-8, PTT Rectangle Digital Map	64

\* \* \* \* \*

## **PART B — TECHNICAL APPROACH**

### **B.0 Introduction**

The FCC has clearly presented the mechanics of the required cost-sharing plan in Appendix A of its *First Report and Order* in WT Docket No. 95-157. The critical elements have been identified following an extensive review and comment period by the industry. It would appear that the industry is eager to initiate microwave cost-sharing processes, for it will accelerate microwave relocation efforts and the deployment of PCS.

The FCC has concluded that cost-sharing serves the public interest as it equitably distributes relocation costs. Cost-sharing also advances industry incentives to relocate entire microwave systems, thus providing consequent operational system integrity benefits to incumbents. This mutually beneficial cause of action now requires the application and delivery of services to ensure the desired benefits of cost-sharing are achieved.

ITA's Technical Approach, embodied within the succeeding sections, will fully conform with the FCC's cost-sharing mechanical requirements. They will also serve to augment the processes by providing innovative analytical tools that will empower PCS licensees to anticipate reimbursement obligations during internal PCS system-design stages. This distributed analytical mechanism serves to expedite the process, enhances the requirement of data confidentiality, reduces administrative encumbrances and supports the

provision of clearinghouse services at the lowest possible expense.

### **B.1 The Clearinghouse's Role**

ITA understands that the role of the clearinghouse is simply to serve as a facilitator in the microwave relocation cost-sharing process. The clearinghouse is not the process, nor should it be structured in a way that encumbers the recognition of prior Relocator reimbursement rights and Later Entrant reimbursement obligations. The clearinghouse functions in the background of the PCS industry as a ready industry transaction and analytical resource, nothing more and nothing less.

### **B.2 Initiation**

A PCS licensee earns a reimbursement right for a particular microwave link on the date that a relocation agreement with a microwave incumbent is executed. It is known at that time which links are the full financial responsibility of the PCS Relocator and those links for which a reimbursement obligation has been created.

The PCS Relocator will then have ten business days to submit documentation of the agreement to a non-profit clearinghouse that has been selected by the FCC. ITA recognizes that reimbursement rights have already been created and are already "on the books" of PCS Block A and B licensees. PCS Block C and future PCS licensees are aware that their site



deployment strategies create both prior relocation liabilities and subsequent reimbursement rights.

### **B.3 Registration**

The initiation of the clearinghouse role in the process commences with the receipt of a PCS Relocator's registration with a clearinghouse. It is ITA's approach that such registration need not be administratively burdensome; however, pertinent information must be gathered for control, review and later dissemination.

#### **B.3.1 Content**

The essential registration information that will be gathered by ITA incorporates PCS Relocator administrative data, relocated microwave link technical data and associated financial relocation data, all of which will be maintained within a fully automated and secure database located at ITA's Arlington, Virginia offices. A back-up database will be maintained at all times at ITA's Gettysburg, Pennsylvania, offices for further security purposes.

##### **B.3.1.1 Administrative/Tracking Data**

The elements that will be maintained for those PCS Relocators who select ITA

to serve as their clearinghouse entity are presented in Exhibit B-1, Administrative and Tracking Data. This basic information will be expanded or reduced should circumstances dictate or should it become necessary to retain additional information for specific registrants.

#### **B.3.1.2 Technical/Financial Information**

Presented in Exhibit B-2, Microwave Relocation Cost Report, is the data that ITA proposes to will retain for each microwave link that is subject to reimbursement obligation. Although it is not mandatory, ITA intends to gather this information at registration, following verification of the receipts for actual expenses, as it will facilitate the speed with which ITA may distribute Later Entrant reimbursement obligations that benefits the PCS Relocator. In other words, the critical relocation compensable cost components and related financial information will be immediately available.

We fully understand that some PCS Relocators may be engaged in microwave incumbent relocations at the time of registration and the information is not yet available. The completion of the Microwave Relocation Cost Report may serve to assist administratively during prior microwave relocation negotiations. We also recognize that it may be a PCS Relocator's preference to submit the technical and financial information for verification at a later date. However, that choice precludes

the clearinghouse from providing its responsibilities until the information is on hand and verified.

So as not to encumber the submission of the information, ITA is willing to assist in the completion of the report by transferring the required information from internal PCS Relocator documents, which will be returned following information verification.

#### **B.3.1.3 Reimbursement Caps**

ITA is aware that the FCC adopted several financial caps to enable future PCS auction participants to assess more accurately the value of licenses, as they would be able to determine potential reimbursement obligations in advance, which will greatly simplify the dispute resolution process. The established caps are \$250,000 on the actual cost of a link relocation, with an additional \$150,000 if a new or modified tower is required.

Although not specifically termed a cap, ITA further understands that there is a 2% limit on the transaction costs that are reimbursable for relocations that occur during voluntary and mandatory negotiation periods.

### **B.3.2 Registration Submittal Methods**

PCS Relocators may submit their clearinghouse registrations to ITA through a variety of methods. These include regular surface carriers and electronic means. Electronic access is available through the Internet — 6048930@mcimail.com — or ITA's bulletin board service, *ITA Relay* — (703) 528-4677.

### **B.3.3 Record Retention**

ITA's clearinghouse functions will conclude no later than April 4, 2005, which is ten years after the date that voluntary negotiations commenced for PCS Block A and B licensees.

## **B.4 Later Entrant Prior Commencement Notification**

Prior to commencing commercial operation, PCS licensees are required to send a PCN to all existing microwave users in the area. At the same time, each PCS licensee must file a copy of the PCN with "the" clearinghouse. As discussed in Section A.2.3.2, we assume that, if necessary, expeditious information exchange will occur among clearinghouses at this juncture to facilitate the determination of a reimbursement obligation. At this point in the process, however, it is quite possible that the Later Entrant will forward the PCN to the clearinghouse of its choice if they have not already registered as a PCS Relocator.

Utilizing base station location information within a PCN, ITA will determine whether the proposed PCS base station, to be operated at full commercial power, is located within a specifically designed rectangle produced through the application of a PTT evaluation. Other components that trigger a reimbursement obligation are determinations as to whether all or part of the relocated microwave link was initially co-channel with the licensed PCS band(s) of the subsequent PCS entity and whether the PCS Relocator has paid the relocation costs of the microwave incumbent.

We suggest that the FCC consider an alternative to the requirement that Later Entrants submit PCNs as one of the trigger mechanisms. Specifically, a notification that simply contains PCS base station coordinates and a site identifier will reduce clearinghouse and PCS licensee costs by significantly reducing the time devoted to processing and analyzing PCNs.

#### **B.4.1 PTT Evaluation**

ITA is fully familiar with the technical requirements to conduct a PTT, as presented in Appendix A, paragraph 32, of the Commission's *First Report and Order*. This evaluation ascertains whether a proposed PCS base station falls within or outside of the defined "reimbursement" rectangle. ITA also recognizes that only co-channel interference is considered for purposes of determining a cost-sharing obligation by a Later Entrant.

The PTT evaluation is performed as it serves to "trigger" the Later Entrant's reimbursement obligation. It is ITA's technical approach to offer this critical cost-sharing process through two methodologies.

#### **B.4.1.1 ITA-conducted PTT**

On behalf of Later Entrants, ITA will have the on-site capability to conduct PTTs and will develop the necessary technical software. Information available within ITA's database will include: microwave coordinates, call signs and operating frequencies; digital MTA/BTA boundaries; FCC PCS allocations; and all PCS licensees.

The output of the PTT evaluation conducted by ITA is a Later Entrant Reimbursement Status and Registration Request form, a sample of which is presented in Exhibit B-3. This report will reveal whether the Later Entrant has or has not created a Reimbursement Obligation; has created a reimbursement right subject to later successful incumbent microwave agreement execution; or will receive future reimbursement rights from forthcoming PCS licensees.

#### **B.4.1.2 ITA's Distributed PTT**

An integral component of ITA's technical approach is to provide Later

Entrants the ability to conduct PTT evaluations on-site to assist in the development of PCS deployment strategies. Upon request and payment of associated fees (refer to Section C.4.2.1), ITA will provide PCS licensees a custom-developed CD-ROM that will contain critical microwave incumbent data; PCS allocation information; and software enabling the generation of the following analyses/reports.

- ◆ Rectangle Report — produces a one-page document and summary for every microwave path of interest in a PCS market. For every microwave path, utilizing the technical components of the PTT evaluation, the reimbursement box's corner coordinates are computed, and every MTA/BTA that the box intersects. A sample Rectangle Report is presented in Exhibit B-4.
- ◆ Microwave Path Report — produces a one-page document and summary report for every microwave path in the market of interest that has one or more PCS Relocator base stations within the box/rectangle. A sample Microwave Path Report is presented in Exhibit B-5.
- ◆ Base Station Report — produces a one-page document with a summary for each PCS base station to be deployed by the Later Entrant and listing all of the microwave paths that are affected by that base station. A sample Base Station Report is presented in Exhibit B-6.

- ◆ Reimbursement Obligation Request for Status Form — produces a one- page document to be communicated to ITA requesting a status verification whether the Later Entrant has created a reimbursement obligation or a reimbursement right. This form is virtually identical to that presented in Exhibit B-3.

Additional capabilities provided within ITA's Distributed PTT CD-ROM include the cost-sharing formula and notification tools incorporating: PCN transmittal; reimbursement obligation payment transmittals; receipt of payment from reimbursor(s); and capabilities to request the status of existing reimbursement rights and dispute resolution procedures.

The ITA Distributed PTT CD-ROM will operate on any 486-class PC or better with MicroSoft Windows; 10 Mb of hard disk capacity; CD-ROM drive; and on virtually any Windows-supported printer.

#### **B.5 Later Entrant Notification of Reimbursement Obligation**

After the PTT evaluation has been conducted by ITA, or ITA validates the PTT results supplied by a Later Entrant who conducted the analysis with the Distributed PTT capability, ITA will determine the amount that the Later Entrant must reimburse the PCS Relocator in accordance with the cost-sharing formula adopted and presented in Appendix A, paragraph 3, of the FCC's *Report and Order* in WT Docket No. 95-157.



ITA also recognizes that PCS Relocators are entitled to full reimbursement of compensable costs, up to the previously referenced caps, if they have relocated non-interfering links that are either fully outside their market area or their licensed frequency band. Specifically, the reimbursement procedures enumerated within Appendix A, paragraph 16, of the FCC's *Report and Order* in WT Docket No. 95-157 will be incorporated within ITA's technical procedures and Later Entrant Reimbursement Obligation Notification.

As presented in paragraph 77 of the FCC's *Report and Order*, PCS licensees remain free to negotiate private cost-sharing agreements and maintain eligibility to seek reimbursement through a clearinghouse from Later Entrants that benefit from such agreements. Such private agreements, however, do not release PCS licensees from their obligations to other PCS licensees that incur relocation costs.

A Microwave Relocation Cost-sharing Schedule for a \$250,000 relocation transaction is presented in Exhibit B-7. An explanation on the use of this schedule is also provided within the exhibit.

#### **B.5.1 Unlicensed PCS Cost-sharing**

Unlicensed PCS cost-sharing obligations are different than those applied to licensed PCS operators due to their service and procedures and will be integrated within ITA's reimbursement notification procedures. Reimbursement responsibilities